



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 221209-0266]

RIN 0648-BL65

**Magnuson-Stevens Fishery Conservation and Management Act Provisions;
Fisheries of the Northeastern United States; Framework Adjustment 17 to the
Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, and
Framework Adjustment 6 to the Bluefish Fishery Management Plan**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Framework Adjustment 17 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan and Framework Adjustment 6 to the Bluefish Fishery Management Plan. This framework was developed by the Mid-Atlantic Fishery Management Council in conjunction with the Atlantic States Marine Fisheries Commission to revise the process for setting recreational management measures, and recreational accountability measures, for summer flounder, scup, black sea bass, and bluefish.

DATES: Comments must be received by *[insert date 30 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: You may submit comments on this document, identified by **NOAA-NMFS-2022-0096**, by the following method:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter **NOAA-NMFS-2022-0096** in the Search box. Click on the “Comment” icon, complete the

required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Copies of Framework Adjustment 17 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan and Framework Adjustment 6 to the Bluefish Fishery Management Plan, including the Environmental Assessment, the Regulatory Impact Review, and the Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared in support of this action are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. The supporting documents are also accessible via the Internet at:

<https://www.mafmc.org/actions/hcr-framework-addenda>.

FOR FURTHER INFORMATION CONTACT: Emily Keiley, Fishery Policy Analyst, (978) 281-9116, or *emily.keiley@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission) cooperatively manage the summer flounder, scup, black sea bass, and bluefish fisheries. The Council submitted Framework Adjustment 17 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) and Framework Adjustment 6 to the Bluefish FMP (the Recreational Harvest

Control Rule (HCR) Framework) to us for consideration of approval. The Recreational HCR Framework proposes adoption of a new process for setting recreational measures (bag, size, and season limits) and modifications to the recreational accountability measures. The goal of this Framework/Addenda is to establish a process for setting recreational measures that: Prevent overfishing; are reflective of stock status; appropriately account for uncertainty in the recreational data; take into consideration angler preferences; and provide an appropriate level of stability and predictability in changes from year to year.

Proposed Recreational Management Measure Setting Process: The Percent Change Approach

This action proposes to modify the process for setting recreational management measures for summer flounder, scup, black sea bass, and bluefish, including how to determine when management measures need to be changed, the percent change required, and the timing of the overall process. This process will apply when stocks are not in a rebuilding plan; when a stock is in a rebuilding plan, recreational measures will be determined based on the requirements of that plan. Bluefish is in a rebuilding plan, so this approach is not currently applicable. The proposed process, referred to as the Percent Change Approach, would use two factors to determine if management measures could remain status quo, could be liberalized, or must be restricted. These factors are:

1. Comparison of a confidence interval (CI) around an estimate of expected harvest under status quo measures to the average recreational harvest limit (RHL) for the upcoming two years and;
2. Biomass compared to the target level, as defined by the most recent stock assessment.

Step 1: Estimating Recreational Harvest

The amount of expected recreational harvest is difficult to predict as it is impacted

by many factors besides the management measures, including fishing effort, availability of various target species, economic factors, and weather. Harvest can vary notably from year to year even under the same set of management measures. Given these challenges, the Council and Commission are supporting the development of improved statistical analysis tools for predicting the impacts of measures on catch and harvest, while accounting for other factors such as angler preferences.

These statistical models may not be available for all species given the amount of data and development that is required to support them. When such models are not available, estimated recreational harvest would be based on the two most recent years of MRIP estimates.

In addition to estimating harvest, the CI around this recreational harvest estimate would also be generated. When developing a CI from two years of MRIP data, the Plan Development Team/Fishery Management Action Team recommended the use of a joint distribution 80-percent confidence interval that takes into consideration the percent standard error (PSE) of each individual year's MRIP estimate and the variability of the estimates between years.

Step 2: Biomass Comparison

The most recent stock assessment will be used to determine the biomass relative to the biomass target (BMSY or the relevant proxy). If the biomass is at least 150 percent of the target, the stock is considered "very high"; if the stock is between 100 and 150 percent of the target, it will be considered "high"; stocks with a biomass below the target size will be categorized as "low."

Step 3: Determining the Percent Change

Considered together, the harvest and biomass comparisons determine the appropriate degree of change, defined as a percentage change in expected harvest, as summarized in Table 1. For example, when the future 2-year average RHL is greater than

the upper bound of the harvest estimate CI (i.e., an RHL underage is expected under status quo measures) and biomass is below the target level, measures would be modified to achieve a 10-percent liberalization in harvest. In this scenario, the liberalization is capped at 10 percent even if the difference between the RHL and expected harvest is greater than 10 percent.

Table 1 – Management Response Table

Factors to determine recommended change		Recommended Change in Harvest
1) Future RHL vs Harvest Estimate	2) Stock biomass compared to the target stock size (B/BMSY)	
Future 2-year average RHL is greater than the upper bound of the harvest estimate confidence interval (harvest is expected to be lower than the RHL)	Very high (at least 150% of the target stock size)	Liberalization: percent based on the difference between the harvest estimate and the 2-year average RHL, not to exceed 40 percent
	High (between the target and 150% of the target stock size)	Liberalization: percent based on the difference between the harvest estimate and the 2-year average RHL, not to exceed 20 percent
	Low (below the target stock size)	Liberalization: 10 percent
Future 2-year average RHL is within the confidence interval of the harvest estimate (harvest is expected to be close to the RHL)	Very high (at least 150% of the target stock size)	Liberalization: 10 percent
	High (between the target and 150% of the target stock size)	No change: 0 percent
	Low (below the target stock size)	Reduction: 10 percent
Future 2-year average RHL is less than the lower bound of the harvest estimate confidence interval (harvest is expected to exceed the RHL)	Very high (at least 150% of the target stock size)	Reduction: 10 percent
	High (between the target and 150% of the target stock size)	Reduction: percent based on the difference between the harvest estimate and the 2-year average RHL, not to exceed 20 percent
	Low (below the target stock size)	Reduction: percent based on the difference between the harvest estimate and the 2-year average RHL, not to exceed 40 percent

Key Terms:

- *Biomass (B):* The size of a stock of fish measured in weight. For summer

flounder, scup, black sea bass, and bluefish, the biomass levels and biomass targets used in management are based on spawning stock biomass.

- *Biomass target (BMSY)*: The stock size (B) associated with maximum sustainable yield (MSY), as defined by a stock assessment. MSY is the largest average catch that can be taken from a stock at BMSY over time under existing environmental conditions without negatively impacting the reproductive capacity of the stock.
- *Confidence Interval*: the upper and lower bound around a point estimate to indicate the range of possible values given the uncertainties around the estimate.
- *Recreational Harvest Limit (RHL)*: The total allowable annual recreational fishery harvest; set based on information from the stock assessment, considerations about scientific and management uncertainty, allocations between the commercial and recreational sectors, and assumptions about dead discards.

Timing

The current process considers adjustments to recreational management measures annually. This has a number of associated challenges, given the timing of MRIP data availability and the fishing seasons. The Percent Change Approach would shift the timing to a 2-year cycle, adjusting measures in sync with the setting of catch and landings limits in response to updated stock assessment information. Updated stock assessments will be available every other year for all four species. In the interim year, measures would be reviewed and may be modified if new data suggest a major change in the expected impacts of those measures on the stock or the fishery.

Sunset Provision

The proposed Percent Change Approach to setting recreational management measures is an improvement over the status quo process because it allows for measures to be set for two years, includes the explicit consideration of biomass, and requires the consideration of variability in harvest estimates. However, the Council and Commission's

Policy Board agreed that the Percent Change Approach should sunset no later than December 31, 2025, with the goal of implementing additional changes to recreational fisheries management during fishing year 2026. These changes will be developed through a separate future management action. In the absence of additional action to revise the recreational management measure-setting process by the sunset date, the process for establishing recreational measures will revert to the methodology currently used by the Council, which is part of the FMP but not part of regulatory text.

Conservation Equivalency

The Council and Policy Board considered, but did not recommend, an option to set constraints around the use of the Commission's conservation equivalency policy as applied to the recreational fisheries for these four species. They decided to maintain the current policy to allow individual states the flexibility to tailor management measures to meet the needs of their fisheries.

This alternative would maintain the ability for individual states to submit proposals for alternative recreational management measures for summer flounder and black sea bass that are expected to achieve an equivalent level of recreational harvest, catch, or fishing mortality (depending on the alternative selected from Alternative Sets 1 and 2) as the measures that would otherwise be implemented. This state-level flexibility can allow measures to be tailored to the unique characteristics of the fisheries in each state. For example, some states have used the conservation equivalency process to maintain a Saturday opening date. The Council and Policy Board supported this level of flexibility and, therefore, selected this as a preferred alternative.

Recreational Accountability Measures

This framework also considers changes to the recreational accountability measures that consider if the recreational ACL overages contributed to overfishing. Specifically, when biomass is between the target and threshold levels, the requirement of

paying back recreational catch limit overages will account for whether those overages contributed to overfishing based on the most recent stock assessment information.

When a reactive AM has been triggered by a recreational ACL overage and the most recent biomass estimate is between the target and the threshold, consideration would also be given to the most recent estimate of fishing mortality relative to F_{MSY} in the year(s) when the overage(s) occurred. The AM response would be stricter if F_{MSY} was exceeded in addition to the ACL (*e.g.*, a payback would be required). If only the recreational ACL was exceeded, the AM response would be less strict (*e.g.*, measures would be revised but a payback would not be required).

Estimates of fishing mortality during the years relevant to the evaluation may not always be available as these estimates are provided through the stock assessment, which are not updated every year. When the relevant fishing mortality estimates are not available, this comparison would default to a comparison of total catch relative to the ABC.

This was selected as a preferred alternative because it considers if the recreational ACL overages contributed to overfishing, and unlike the Percent Change Approach, these recreational accountability measures will not sunset in 2025.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the Assistant Administrator has determined that this proposed rule is consistent with the Summer Flounder, Scup, and Black Sea Bass, and Bluefish FMPs, other provisions of the Magnuson Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the

Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The Council conducted an evaluation of the potential socioeconomic impacts of the proposed measures.

Affiliates potentially regulated by this action include any affiliates with Federal for-hire permits for summer flounder, scup, black sea bass, and/or bluefish in any year between 2019-2021. A total of 688 affiliates were identified as being potentially regulated by this action, all of which were identified as small businesses based on their average revenues in 2019-2021. Of these 688 affiliates, a total of 363 affiliates (53 percent) reported that the majority of their revenues in 2021 came from for-hire fishing for any species. Some of these affiliates may have also participated in commercial fishing. The SBA defines a small for-hire recreational fishing business as a firm with receipts of up to \$11 million. Estimating what proportion of the overall revenues of these for-hire firms came from fishing activities for an individual species is not possible. Nevertheless, given the popularity of summer flounder, scup, black sea bass, and bluefish as recreational species in the Mid-Atlantic and New England, revenues generated from these species are likely very important for many of these firms at certain times of the year. The 3-year average (2018-2020) combined gross receipts (all for-hire fishing activity combined) for these small entities was \$49,916,903, ranging from less than \$10,000 for 105 entities (lowest value \$46) to over \$1,000,000 for 8 entities (highest value \$3.6 million).

The proposed action would adjust the process for setting recreational management measures, and is administrative in nature. Because the proposed action is only changing the process used to set recreational measures, and is not making changes to the recreational management measures (possession limits, seasons, and size limits) it will not change the regulations effecting the operation of recreational fisheries directly. Future

actions, which implement new management measures, based on this proposed process, would perform economic analyses of the impacts as appropriate. Future impacts on the entities described will depend on the harvest limits and management measures that are set. For-hire revenues are also impacted by a variety of other factors, including demand for for-hire trips for summer flounder, scup, black sea bass, bluefish, and other potential target species; fuel prices; weather; the economy; and other factors. Because this action is not making changes to the recreational management measures and is administrative in nature, we have determined that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 9, 2022.

Samuel D. Rauch, III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.100, revise paragraphs (a) introductory text, (b) introductory text, and (b)(1) to read as follows:

§ 648.100 Summer flounder Annual Catch Limit (ACL).

(a) The Monitoring Committee shall recommend to the MAFMC separate ACLs for the commercial and recreational summer flounder fisheries, the sum total of which shall be equal to the ABC recommended by the SSC.

* * * * *

(b) *Performance review.* The Monitoring Committee shall conduct a detailed review of fishery performance relative to the sector ACLs at least every 5 years.

(1) If one or both of the sector-specific ACLs is exceeded with a frequency greater than 25 percent (*i.e.*, more than once in 4 years or any 2 consecutive years), the Monitoring Committee will review fishery performance information and consider whether changes in measures are needed.

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3. In § 648.101, revise paragraphs (a) introductory text, (a)(1) and (b) to read as follows:

§ 648.101 Summer flounder Annual Catch Target (ACT).

(a) The Monitoring Committee shall identify and review the relevant sources of management uncertainty to recommend ACTs for the commercial and recreational fishing sectors as part of the summer flounder specification process. The Monitoring Committee recommendations shall identify the specific sources of management uncertainty that were considered, technical approaches to mitigating these sources of uncertainty, and any additional relevant information considered in the ACT recommendation process.

(1) *Sectors.* Commercial and recreational specific ACTs shall be less than or equal to the sector-specific ACLs. The Monitoring Committee shall recommend any reduction in catch necessary to address sector-specific management uncertainty, consistent with paragraph (a) of this section.

* * * * *

(b) *Performance review.* The Monitoring Committee shall conduct a detailed review of fishery performance relative to ACTs in conjunction with any ACL performance review, as outlined in § 648.100(b)(1) through (3).

4. In § 648.102, revise paragraphs (a) introductory text, (a)(6), (a)(11), (b), and (d) to read as follows:

§ 648.102 Summer flounder specifications.

(a) *Commercial quota, recreational landing limits, research set-asides, and other specification measures.* The Monitoring Committee shall recommend to the MAFMC, through the specifications process, for use in conjunction with each ACL and ACT, a sector-specific research set-aside, estimates of sector-related discards, a recreational harvest limit, and a commercial quota, along with other measures, as needed to prevent overages of the applicable specified limits or targets for each sector, as prescribed in the FMP. The measures to be considered by the Monitoring Committee are:

* * * * *

(6) Recreational possession limit set from a range of 0 to 15 summer flounder.

* * * * *

(11) Modification of existing accountability measures and ACT control rules utilized by the Monitoring Committee.

(b) *Specification fishing measures.* The MAFMC shall review the recommendations of the Monitoring Committee and, based on the recommendations and any public comment, recommend to the Regional Administrator measures that are projected to constrain the sectors to the applicable limit or target as prescribed in the FMP. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Regional Administrator shall review these recommendations and

any recommendations of the ASMFC.

* * * * *

(d) *Recreational specification measures.* The MAFMC shall review the recommendations of the Monitoring Committee and, based on the recommendations and any public comment, recommend to the Regional Administrator measures that are projected to prevent overages of the applicable recreational target, as prescribed in the FMP, for an upcoming fishing year or years. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The MAFMC and the ASMFC will recommend that the Regional Administrator implement either:

(1) *Coastwide measures.* Annual, or multi-year, coastwide management measures projected to achieve the applicable recreational target as prescribed in the FMP, or

(2) *Conservation equivalent measures.* Individual states, or regions formed voluntarily by adjacent states (*i.e.*, multi-state conservation equivalency regions), may implement different combinations of minimum and/or maximum fish sizes, possession limits, and closed seasons that achieve equivalent conservation as the coastwide measures established under paragraph (e)(1) of this section. Each state or multi-state conservation equivalency region may implement measures by mode or area only if the proportional standard error of recreational landing estimates by mode or area for that state is less than 30 percent

(i) After review of the recommendations, the Regional Administrator will publish a proposed rule in the **Federal Register** as soon as possible to implement the overall recreational target for the fishing year(s), and the ASMFC's recommendation concerning conservation equivalency, the precautionary default measures, and coastwide measures.

(ii) The ASMFC will review conservation equivalency proposals and determine whether or not they achieve the necessary adjustment to recreational landings. The

ASMFC will provide the Regional Administrator with the individual state and/or multi-state region conservation measures for the approved state and/or multi-state region proposals and, in the case of disapproved state and/or multi-state region proposals, the precautionary default measures that should be applied to a state or region. At the request of the ASMFC, precautionary default measures would apply to federally permitted party/charter vessels and other recreational fishing vessels harvesting summer flounder in or from the EEZ when landing in a state that implements measures not approved by the ASMFC.

(iii) After considering public comment, the Regional Administrator will publish a final rule in the **Federal Register** to implement either the state or regional conservation equivalency measures or coastwide measures to ensure that the applicable specified target is not exceeded.

(iv) The ASMFC may allow states or regions assigned the precautionary default measures to resubmit revised management measures. The ASMFC will detail the procedures by which the state or region can develop alternate measures. The ASMFC will notify the Regional Administrator of any resubmitted state or regional proposals approved subsequent to publication of the final rule and the Regional Administrator will publish a document in the **Federal Register** to notify the public.

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5. In § 648.103, revise paragraphs (c), (d)(1), and (d)(2)(ii) to read as follows:

§ 648.103 Summer flounder accountability measures.

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(c) *Recreational ACL Evaluation.* The recreational sector ACL will be evaluated based on a 3-year moving average comparison of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the 3-year average recreational sector ACL has been exceeded.

(d) * * *

(1) If biomass is below the threshold, the stock is under rebuilding, or biological reference points are unknown. If the most recent estimate of biomass is below the BMSY threshold (*i.e.*, $B/BMSY$ is less than 0.5),), the stock is under a rebuilding plan, or the biological reference points (B or BMSY) are unknown, and the recreational ACL has been exceeded, then the exact amount, in pounds, by which the most recent three-year average recreational catch estimate exceeded the most recent three-year average recreational ACL will be deducted, in the following fishing year, or as soon as possible, thereafter, once catch data are available, from the recreational ACT. This payback may be evenly spread over two years if doing so allows for use of identical recreational management measures across the upcoming two years.

(2) * * *

(ii) *If the fishing mortality (F) has exceeded FMSY (or the proxy)*. If the most recent estimate of total fishing mortality exceeds FMSY (or the proxy), then an adjustment to the recreational ACT will be made as soon as possible, once catch data are available, as described in paragraph (d)(2)(ii)(A) of this section. If an estimate of total fishing mortality is not available for the most recent complete year of catch data, then a comparison of total catch relative to the ABC will be used.

(A) *Adjustment to Recreational ACT*. If an adjustment to the following year's Recreational ACT is required, then the ACT will be reduced by the exact amount, in pounds, of the product of the overage, defined as the difference between the most recent three-year average recreational catch and the most recent three-year recreational ACL, and the payback coefficient, as specified in paragraph

(d)(2)(ii)(B) of this section. This payback may be evenly spread over two years if doing so allows for use of identical recreational management measures across the upcoming two years.

(B) *Payback coefficient*. The payback coefficient is the difference between the most recent estimate of biomass and B_{MSY} (*i.e.*, $B_{MSY}-B$) divided by one-half of B_{MSY} .

* * * * *

6. In § 648.120, revise paragraphs (a) introductory text, (b) introductory text, and (b)(1) to read as follows:

§ 648.120 Scup Annual Catch Limit (ACL).

(a) *Annual Catch Limits*. The Monitoring Committee shall recommend to the MAFMC separate ACLs for the commercial and recreational scup fisheries, the sum total of which shall be equal to the ABC recommended by the SSC.

* * * * *

(b) *Performance review*. The Monitoring Committee shall conduct a detailed review of fishery performance relative to the sector ACLs at least every 5 years.

(1) If one or both of the sector-specific ACLs is exceeded with a frequency greater than 25 percent (*i.e.*, more than once in 4 years or any 2 consecutive years), the Monitoring Committee will review fishery performance information and consider whether changes to measures are needed.

* * * * *

7. In § 648.121, revise paragraphs (a) introductory text and (a)(1) and (b) to read as follows:

§ 648.121 Scup Annual Catch Target (ACT).

(a) *Annual Catch Targets*. The Monitoring Committee shall identify and review the relevant sources of management uncertainty to recommend ACTs for the commercial and recreational fishing sectors as part of the scup specification process. The Monitoring Committee recommendations shall identify the specific sources of management uncertainty that were considered, technical approaches to mitigating these sources of uncertainty, and any additional relevant information considered in the ACT

recommendation process.

(1) *Sectors*. Commercial and recreational specific ACTs shall be less than or equal to the sector-specific ACLs. The Monitoring Committee shall recommend any reduction in catch necessary to address sector-specific management uncertainty, consistent with paragraph (a) of this section.

* * * * *

(b) *Performance review*. The Monitoring Committee shall conduct a detailed review of fishery performance relative to ACTs in conjunction with any ACL performance review, as outlined in § 648.120(b)(1) through (3).

8. In § 648.122, revise **paragraphs (a)** introductory text, (a)(7), (a)(14) and (b) to read as follows:

§ 648.122 Scup Specifications.

(a) *Commercial quota, recreational landing limits, research set-asides, and other specification measures*. The Monitoring Committee shall recommend to the MAFMC and the ASMFC through the specifications process, for use in conjunction with each ACL and ACT, a sector-specific research set-aside, estimates of sector-related discards, a recreational harvest limit, and a commercial quota, along with other measures, as needed, to prevent overages of the applicable specified limits or targets for each sector, as prescribed in the FMP. The measures to be considered by the Monitoring Committee are as follows:

* * * * *

(7) Recreational possession limit set from a range of 0 to 50 scup.

* * * * *

(14) Modification of existing AM measures and ACT control rules utilized by the Monitoring Committee.

(b) *Specification of fishing measures*. The MAFMC shall review the

recommendations of the Monitoring Committee. Based on these recommendations and any public comment, the MAFMC shall recommend to the Regional Administrator measures necessary to prevent overages of the appropriate specified limits or targets for each sector, as prescribed in the FMP. The MAFMC's recommendation must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Regional Administrator shall review these recommendations and any recommendations of the ASMFC. After such review, NMFS will publish a proposed rule in the Federal Register to implement a commercial quota, specifying the amount of quota allocated to each of the three periods, possession limits for the Winter I and Winter II periods, including possession limits that result from potential rollover of quota from Winter I to Winter II, the percentage of landings attained during the Winter I fishery at which the possession limits will be reduced, a recreational harvest limit, and additional management measures for the commercial and recreational fisheries.

* * * * *

9. In § 648.123, revise [paragraphs \(c\)](#) introductory text, [\(d\)](#) introductory text, [\(d\)\(1\)](#), [\(d\)\(2\)\(ii\)](#) introductory text, and [\(d\)\(2\)\(ii\)\(A\)](#) to read as follows:

§ 648.123 Scup accountability measures.

* * * * *

(c) *Recreational ACL*. The recreational sector ACL will be evaluated based on a 3-year moving average comparison of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the 3-year average recreational sector ACL has been exceeded.

(d) *Recreational AMs*. If the recreational ACL is exceeded, then the following procedure will be followed:

(1) If biomass is below the threshold, the stock is under rebuilding, or biological reference points are unknown. If the most recent estimate of biomass is below the BMSY threshold (*i.e.*, $B/BMSY$ is less than 0.5), the stock is under a rebuilding plan, or the biological reference points (B or BMSY) are unknown, and the recreational ACL has been exceeded, then the exact amount, in pounds, by which the most recent three-year average recreational catch estimate exceeded the most recent three-year average recreational ACL will be deducted in the following fishing year, or as soon as possible, thereafter, once catch data are available, from the recreational ACT. This payback may be evenly spread over two years if doing so allows for use of identical recreational management measures across the upcoming two years.

* * * * *

(2) * * *

(ii) *If the fishing mortality (F) has exceeded FMSY (or the proxy)*. If the most recent estimate of total fishing mortality exceeds FMSY (or the proxy), then an adjustment to the recreational ACT will be made as soon as possible once catch data are available, as described in paragraph (d)(2)(ii)(A) of this section. If an estimate of total fishing mortality for the most recent complete year of catch data is not available, then a comparison of total catch relative to the ABC will be used.

(A) Adjustment to Recreational ACT. If an adjustment to the following year's Recreational ACT is required, then the ACT will be reduced by the exact amount, in pounds, of the product of the overage, defined as the difference between the most recent three-year average recreational catch and the most recent three-year average recreational ACL, and the payback coefficient, as specified in paragraph (d)(2)(ii)(B) of this section. This payback may be evenly spread over two years if doing so allows for use of identical recreational management measures across the upcoming two years.

* * * * *

10. In § 648.140, revise paragraphs (a) introductory text, (b) introductory text, and (b)(1) to read as follows:

§ 648.140 Black sea bass Annual Catch Limit (ACL).

(a) *Annual Catch Limits.* The Monitoring Committee shall recommend to the MAFMC separate ACLs for the commercial and recreational scup fisheries, the sum total of which shall be equal to the ABC recommended by the SSC.

* * * * *

(b) *Performance review.* The Monitoring Committee shall conduct a detailed review of fishery performance relative to the sector ACLs at least every 5 years.

(1) If one or both of the sector-specific ACLs is exceeded with a frequency greater than 25 percent (*i.e.*, more than once in 4 years or any 2 consecutive years), the Monitoring Committee will review fishery performance information and consider whether changes to measures are needed.

* * * * *

11. In § 648.141, revise paragraphs (a) introductory text, (a)(1) and (b) to read as follows:

§ 648.141 Black sea bass Annual Catch Target (ACT).

(a) *Annual Catch Targets.* The Monitoring Committee shall identify and review the relevant sources of management uncertainty to recommend ACTs for the commercial and recreational fishing sectors as part of the black sea bass specification process. The Monitoring Committee recommendations shall identify the specific sources of management uncertainty that were considered, technical approaches to mitigating these sources of uncertainty, and any additional relevant information considered in the ACT recommendation process.

(1) *Sectors.* Commercial and recreational specific ACTs shall be less than or equal to the sector-specific ACLs. The Monitoring Committee shall recommend any

reduction in catch necessary to address sector-specific management uncertainty, consistent with paragraph (a) of this section.

* * * * *

(b) *Performance review.* The Monitoring Committee shall conduct a detailed review of fishery performance relative to ACTs in conjunction with any ACL performance review, as outlined in § 648.140(b)(1)-(3).

12. In § 648.142, revise paragraphs (a) introductory text, (a)(7), (a)(10), (b), (d) introductory text, (d)(1) and (d)(2)(i) through (iv) to read as follows:

§ 648.142 Black sea bass specifications.

(a) *Specifications.* Commercial quota, recreational landing limit, research set-aside, and other specification measures. The Monitoring Committee will recommend to the MAFMC and the ASMFC, through the specification process, for use in conjunction with the ACL and ACT, sector-specific research set-asides, estimates of the sector-related discards, a recreational harvest limit, a commercial quota, along with other measures, as needed, that are projected to prevent overages of the applicable specified limits or targets for each sector as prescribed in the FMP. The following measures are to be considered by the Monitoring Committee:

* * * * *

(7) A recreational possession limit.

* * * * *

(10) Recreational state conservation equivalent and precautionary default measures utilizing possession limits, minimum fish sizes, and/or seasons.

* * * * *

(b) *Specification fishing measures.* The MAFMC shall review the Monitoring Committee recommendations and, based on the recommendations and public comment, make recommendations to the Regional Administrator on measures projected to constrain

the sectors to the applicable limit or target as prescribed in the FMP. Included in the recommendation will be supporting documents, as appropriate, concerning the environmental and economic impacts of the final rule. The Regional Administrator will review these recommendations and any recommendations of the ASMFC. After such review, the Regional Administrator will publish a proposed rule in the Federal Register to implement a commercial quota, a recreational harvest limit, and additional management measures for the commercial fishery.

* * * * *

(d) *Recreational specification measures.* The Monitoring Committee shall recommend to the MAFMC and ASMFC measures that are projected to prevent overages of the applicable recreational target as prescribed in the FMP. The MAFMC shall review these recommendations and, based on the recommendations and any public comment, recommend recreational management measures to the Regional Administrator. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The MAFMC and the ASMFC will recommend that the Regional Administrator implement either:

(1) *Coastwide measures.* Annual coastwide management measures that constrain the recreational black sea bass fishery to the recreational target as specified in the fishery management plan, or

(2) * * *

(i) After review of the recommendations, the Regional Administrator will publish a proposed rule in the Federal Register as soon as possible to implement the overall recreational target required for the fishing year(s), and the ASMFC's recommendation concerning conservation equivalency, the precautionary default measures, and coastwide measures.

(ii) The ASMFC will review conservation equivalency proposals and determine whether or not they achieve the necessary recreational target. The ASMFC will provide the Regional Administrator with the individual state and/or multi-state region conservation measures for the approved state and/or multi-state region proposals and, in the case of disapproved state and/or multi-state region proposals, the precautionary default measures that should be applied to a state or region. At the request of the ASMFC, precautionary default measures would apply to federally permitted party/charter vessels and other recreational fishing vessels harvesting black sea bass in or from the EEZ when landing in a state that implements measures not approved by the ASMFC.

(iii) After considering public comment, the Regional Administrator will publish a final rule in the Federal Register to implement either the state or regional conservation equivalency measures or coastwide measures to ensure that the applicable specified target is not exceeded.

(iv) The ASMFC may allow states or regions assigned the precautionary default measures to resubmit revised management measures. The ASMFC will detail the procedures by which the state or region can develop alternate measures. The ASMFC will notify the Regional Administrator of any resubmitted state or regional proposals approved subsequent to publication of the final rule and the Regional Administrator will publish a document in the Federal Register to notify the public.

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13. In § 648.143, revise paragraphs (c) and (d) to read as follows:

§ 648.143 Black sea bass accountability measures.

* * * * *

(c) *Recreational ACL Evaluation.* The recreational sector ACL will be evaluated based on a 3-year moving average comparison of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the 3-year average

recreational sector ACL has been exceeded.

(d) *Recreational AMs.* If the recreational ACL is exceeded, then the following procedure will be followed:

(1) If biomass is below the threshold, the stock is under rebuilding, or biological reference points are unknown. If the most recent estimate of biomass is below the BMSY threshold (*i.e.*, B/B_{MSY} is less than 0.5), the stock is under a rebuilding plan, or the biological reference points (B or B_{MSY}) are unknown, and the recreational ACL has been exceeded, then the exact amount, in pounds, by which the most recent three-year average recreational catch estimate exceeded the most recent three-year average recreational ACL will be deducted in the following fishing year, or as soon as possible thereafter, once catch data are available, from the recreational ACT. This payback may be evenly spread over two years if doing so allows for use of identical recreational management measures across the upcoming two years.

(2) *If biomass is above the threshold, but below the target, and the stock is not under rebuilding.* If the most recent estimate of biomass is above the biomass threshold (B/B_{MSY} is greater than 0.5), but below the biomass target (B/B_{MSY} is less than 1.0), and the stock is not under a rebuilding plan, then the following AMs will apply:

(i) *If the Recreational ACL has been exceeded.* If the Recreational ACL has been exceeded, then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(ii) *If the fishing mortality (F) has exceeded F_{MSY} (or the proxy).* If the most recent estimate of total fishing mortality exceeds F_{MSY} (or the proxy) then an adjustment to the recreational ACT will be made as soon as possible once catch data are available, as described in paragraph (d)(2)(ii)(A) of this section. If an estimate of total

fishing mortality for the most recent complete year of catch data is not available, then a comparison of total catch relative to the ABC will be used.

(A) *Adjustment to Recreational ACT.* If an adjustment to the following year's Recreational ACT is required, then the ACT will be reduced by the exact amount, in pounds, of the product of the overage, defined as the difference between the most recent three-year average recreational catch and the most recent three-year average recreational ACL, and the payback coefficient, as specified in paragraph (d)(2)(ii)(B) of this section. This payback may be evenly spread over two years if doing so allows for use of identical recreational management measures across the upcoming two years.

(B) *Payback coefficient.* The payback coefficient is the difference between the most recent estimate of biomass and B_{MSY} (*i.e.*, $B_{MSY} - B$) divided by one-half of B_{MSY} .

(3) *If biomass is above B_{MSY} .* If the most recent estimate of biomass is above B_{MSY} (*i.e.*, B/B_{MSY} is greater than 1.0), then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

* * * * *

13. In § 648.160, revise paragraph (b) to read as follows:

§ 648.160 Bluefish Annual Catch Limit (ACL).

* * * * *

(b) *Performance review.* The Bluefish Monitoring Committee shall conduct a detailed review of fishery performance relative to the ACL at least every 5 years.

(1) If the ACL is exceeded with a frequency greater than 25 percent (*i.e.*, more than once in 4 years or any 2 consecutive years), the Bluefish Monitoring Committee will review fishery performance information and consider whether changes to measures are needed.

(2) The MAFMC may specify more frequent or more specific ACL performance review criteria as part of a stock rebuilding plan following the determination that the bluefish stock has become overfished.

(3) Performance reviews shall not substitute for annual reviews that occur to ascertain if prior year ACLs have been exceeded, but may be conducted in conjunction with such reviews.

14. In § 648.162, revise paragraphs (a) introductory text and (c) to read as follows:

§ 648.162 Bluefish specifications.

(a) *Recommended measures.* Based on the annual review and requests for research quota as described in paragraph (h) of this section, the Bluefish Monitoring Committee shall recommend to the MAFMC and the ASMFC the following measures to ensure that the ACL specified by the process outlined in § 648.160(a) will not be exceeded:

* * * * *

(c) *Annual fishing measures.* The MAFMC shall review the recommendations of the Bluefish Monitoring Committee. Based on these recommendations and any public comment, the MAFMC shall recommend to the Regional Administrator by September 1 measures necessary to prevent overages of the applicable specified limits or targets for each sector as prescribed in the FMP. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator shall review these recommendations and any recommendations of the ASMFC. After such review, NMFS will publish a proposed rule in the Federal Register as soon as practicable to implement ACLs, ACTs, research quota, a coastwide commercial quota, individual state commercial quotas, a recreational harvest limit, and additional management measures for the commercial and recreational fisheries to prevent overages of the applicable specified

limits or targets for each sector as prescribed in the FMP. After considering public comment, NMFS will publish a final rule in the Federal Register.

* * * * *

15. In § 648.163 revise paragraphs (a), (d) and (f) to read as follows:

§ 648.163 Bluefish Accountability Measures (AMs).

(a) *ACL overage evaluation.* The ACLs will be evaluated based on a single-year examination of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the ACLs have been exceeded.

* * * * *

(d) *Recreational landings AM when the recreational ACL is exceeded and no sector-to-sector transfer of allowable landings has occurred.* If the recreational ACL is exceeded and no transfer between the commercial and recreational sector was made for the fishing year, as outlined in § 648.162(b)(2), then the following procedure will be followed:

(1) *If biomass is below the threshold, the stock is under rebuilding, or biological reference points are unknown.* If the most recent estimate of biomass is below the B_{MSY} threshold (i.e., B/B_{MSY} is less than 0.5), the stock is under a rebuilding plan, or the biological reference points (B or B_{MSY}) are unknown, and the recreational ACL has been exceeded, then the exact amount, in pounds, by which the most recent year's recreational catch estimate exceeded the most recent year's recreational ACL will be deducted from the following year's recreational ACT, or as soon as possible thereafter, once catch data are available. This payback may be evenly spread over two years if doing so allows for use of identical recreational management measures across the upcoming two years.

(2) *If biomass is above the threshold, but below the target, and the stock is not under rebuilding.* If the most recent estimate of biomass is above the biomass threshold (B/B_{MSY} is greater than 0.5), but below the biomass target (B/B_{MSY} is less than 1.0), and

the stock is not under a rebuilding plan, then the following AMs will apply:

(i) *If the recreational ACL has been exceeded.* If the recreational ACL has been exceeded, then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(ii) *If the fishing mortality (F) has exceeded FMSY (or the proxy).* If the most recent estimate of total fishing mortality exceeds FMSY (or the proxy) then an adjustment to the recreational ACT will be made as soon as possible once catch data are available. If an estimate of total fishing mortality for the most recent complete year of catch data is not available, then a comparison of total catch relative to the ABC will be used.

(A) Adjustment to Recreational ACT. If an adjustment to the following year's Recreational ACT is required, then the ACT will be reduced by the exact amount, in pounds, of the product of the recreational ACL overage and the payback coefficient, as specified in paragraph (d)(2)(ii)(B) of this section. This payback may be evenly spread over two years if doing so allows for use of identical recreational management measures across the upcoming two years.

(B) *Payback coefficient.* The payback coefficient is the difference between the most recent estimates of B_{MSY} and biomass (*i.e.*, $B_{MSY} - B$) divided by one-half of B_{MSY} .

(3) If biomass is above BMSY. If the most recent estimate of biomass is above BMSY (*i.e.*, $B/BMSY$ is greater than 1.0), then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

* * * * *

(f) Non-landing AMs. In the event that the fishery-level ACL has been exceeded and the overage has not been accommodated through the AM measures in paragraphs (a) through (d) of this section, then the exact amount, in pounds, by which the fishery-level ACL was exceeded shall be deducted, as soon as possible, from subsequent, single fishing year ACTs. The payback will be applied to each sector's ACT in proportion to each sector's contribution to the overage.

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